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4 UNITED STATES DISTRICT COURT
5 DISTRICT OF NEVADA

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7 HYUNDAI MOTOR AMERICA, INC., et al.,

8 Plaintiff(s),

9 v.

10 MIDWEST INDUSTRIAL SUPPLY
11 COMPANY, et al.,

12 Defendant(s).

Case No. 2:17-CV-3010 JCM (GWF)

ORDER

13
14 Presently before the court is defendants Midwest Industrial Supply Company and
15 Alliance Automotive, LLC's (collectively "defendants") motion for leave to file surreply. (ECF
16 No. 122).

17 Also before the court is defendants renewed motion to seal. (ECF No. 123).

18 Also before the court is plaintiffs Hyundai Motor America, Inc. and Hyundai Motor
19 Company's (collectively "plaintiffs") motion to seal. (ECF Nos. 124, 125).

20 **I. Surreply**

21 On March 13, 2019, the parties filed a notice of settlement which resolved all claims in
22 this litigation. (ECF No. 56). The notice also provided that the offer of judgment "is not to be
23 construed either as an admission that Defendants are liable in this action or that Plaintiffs . . .
24 have suffered damages." *Id.*

25 On April 18, 2019, the court entered judgement and plaintiffs subsequently filed a motion
26 for attorney's fees. (ECF Nos. 75, 77, 78). Defendants filed a response (ECF No. 96), to which
27 plaintiffs replied (ECF No. 116). The reply includes new evidence regarding alleged material
28 differences between Hyundai's parts and the Mobis parts that defendants sold. Defendants

1 request leave to file surreply so they can adequately address this new evidence. (ECF No. 122).
2 Good cause appearing, the court will grant defendants' motion.

3 **II. Seal**

4 The public has a general right to inspect judicial records and documents. *Kamakana v.*
5 *City & County of Honolulu*, 447 F.3d 1172, 1178 (9th Cir. 2006). However, "access to judicial
6 records is not absolute." *Id.* The Ninth Circuit has identified two types of documents that are
7 "not subject to the right of public access . . . because the records have 'traditionally been kept
8 secret for important policy reasons.'" *Id.* (quoting *Times Mirror Co. v. United States*, 873 F.2d
9 1210, 1219 (9th Cir. 1989)). These two types of documents are "grand jury transcripts and
10 warrant materials in the midst of a pre-indictment investigation." *Id.*

11 For all other documents, there is a "strong presumption in favor of access to court
12 records." *Foltz v. State Farm Mut. Auto. Ins. Co.*, 331 F.3d 1122, 1135 (9th Cir. 2003) (citation
13 omitted). A litigant can overcome this presumption by articulating "compelling reasons" that
14 outweigh the history and public policy in favor of disclosure. *Kamakana*, 447 F.3d at 1178–79.
15 Compelling reasons exist "when such 'court files might have become a vehicle for improper
16 purposes,' such as the use of records to gratify private spite, promote public scandal, circulate
17 libelous statements, or release trade secrets." *Id.* at 1179 (quoting *Nixon v. Warner Commc'ns,*
18 *Inc.*, 435 U.S. 589, 598 (1978)).

19 Defendants argue that the court should redact and seal certain lines from paragraphs 44,
20 45, and 46 of Hans Sundgaard's declaration (ECF No. 109). (ECF No. 123). Further, plaintiffs
21 argue that the court should seal the following:

- 22 (1) Kenneth E. Keller's supplemental declaration and exhibit A thereto (ECF
23 Nos. 119-13, 119-14);
- 24 (2) David Goodloe's supplemental declaration and exhibit 1 thereto (ECF Nos.
25 119-1, 119-2);
- 26 (3) exhibit D to Eric Sim's declaration (ECF No. 119-7);
- 27 (4) objections to declarations (ECF No. 120);
- 28 (5) plaintiffs' reply in support of their motion for attorney's fees (ECF No.
119);
- (6) Jason E. Erb's declaration (ECF No. 125-3);
- (7) exhibits 1 and 2 of Robert C. Triulzi's declaration (ECF Nos. 106-1, 106-2);

- 1 (8) exhibits 30, 36, and 37 of Jonathan D. Jay's declaration (ECF Nos. 113-30,
2 113-36, 113-37);
3 (9) exhibit 1 to David M. Hallman's declaration (ECF No. 98-1); and
4 (10) various portions of defendants' response to plaintiffs' motion for attorney's
5 fees (ECF No. 95).

6 These documents and exhibits contain proprietary business information. The relevant
7 portions of Hans Sungaard's declaration identify defendants' confidential sales records and
8 profits in paragraphs 44, 45, and 46. (ECF No. 109). The remaining documents and exhibits that
9 plaintiffs request to seal also contain proprietary information pertaining to sales records, non-
10 public information from a government agency, engineering specifications, confidential contracts,
11 testimony on sealed exhibits, identification manuals, and discussions of sealed expert reports.
12 See (ECF Nos. 95, 98-1, 106-1, 106-2, 113-30, 113-36, 113-37, 119, 119-1, 119-2, 119-7, 119-
13 13, 119-14, 120, 125-3). There are compelling reasons to seal these documents because their
14 public disclosure would result in the "release of trade secrets." *Foltz*, 331 F.3d at 1179.

15 Accordingly,

16 IT IS HEREBY ORDERED, ADJUDGED, and DECREED that defendants' motion for
17 leave to file surreply (ECF No. 122) be, and the same hereby is, GRANTED.

18 IT IS FURTHER ORDERED that defendants shall have seven (7) days from the date of
19 this order to file a surreply not to exceed eight (8) pages.

20 IT IS FURTHER ORDERED that defendants motion to seal (ECF No. 123) be, and the
21 same hereby is, GRANTED.

22 IT IS FURTHER ORDERED that plaintiffs' motion to seal (ECF Nos. 124, 125) be, and
23 the same hereby is, GRANTED.

24 DATED June 20, 2019.

25 
UNITED STATES DISTRICT JUDGE